

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:20-CR-0167-M-3

UNITED STATES OF AMERICA

v.

JORDAN DUNCAN,
Defendant

NOTICE OF DEFENDANT DUNCAN'S
SUPPLEMENTAL STATUS REPORT
ON THE GOVERNMENT'S RE-
PRODUCTION OF CLASSIFIED
INFORMATION

The undersigned files this notice of Defendant Duncan's supplemental status report, as another update based on the issues raised during the Court's pre-trial conference held on February 26, 2024 and the joint status report filed by the parties at DE 415. The undersigned informs this Court of the following, namely due to the undersigned's forecasts set out in DE 415 are imperiled as set out below:

The Government produced classified information again: Last week, on Thursday, March 21, 2024, the Government produced to the defense team an external hard drive with re-copies of Government discovery items, including Production 11 (a partial extraction of data from a hard drive the Government seized from Mr. Duncan's apartment in October of 2020). Production 11 was supposed to be sanitized, meaning that all the classified information contained the previous attempt at Production 11, and inadvertently produced to our uncleared defense team, was supposed to be deleted in a secure manner, especially since this case is not proceeding under the safeguards outlined in the Classified Information Procedures Act (CIPA), 18 U.S.C. App. III. The following day, Mr. Duncan, during a discovery review session with the defense team with the newly obtained hard drive, identified that classified information was still in Production 11.

The defense team has divested itself of a large amount of discovery again: After Mr. Duncan informed the defense team that a significant amount of classified information was on the newly obtained hard drive, the undersigned quickly confirmed that by briefly looking at the marking on a document located on the drive. The undersigned cut short the discovery review session at the Harnett County Detention Center and instructed the defense team's paralegal to take the tainted drive straight to the Government's office in Raleigh to return it. The undersigned emailed counsel for the Government to inform them of the situation and that the team's paralegal was on their way to the Government's office. The undersigned's paralegal delivered the drive to the Government's office early that afternoon.

A status conference is likely needed: The undersigned does not know at this point how the case can be prepared for trial without CIPA's guardrails being put into effect, including giving Mr. Duncan access to a sensitive compartmented information facility (SCIF) combined with at least one member of the defense team obtaining a security clearance. Mr. Duncan should be placed on pre-trial release under the Bail Reform Act, with conditions similar to those of co-defendants Hermanson and Maurino, given the delays that will be imposed by erecting CIPA guardrails at this point in the case. Another option, potentially, is excluding Production 11 as evidence in this case, assuming without conceding at this point that there is no non-classified information in Production 11 that Mr. Duncan may need to utilize to rebut other aspects of the Government's accusations.

Respectfully submitted, this the 26th day of March, 2024.

TARLTON LAW PLLC

/s/ Raymond C. Tarlton
Raymond C. Tarlton
Attorney for Defendant
N.C. State Bar # 38784
ray@tarltonfirm.com

P. O. Box 91624
Raleigh, NC 27675
919-390-1278 (TEL)

Designation: CJA Appointed

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date shown below, he electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification to Assistant United States Attorney Barbara D. Kocher.

This the 26th day of March, 2024.

/s/ Raymond C. Tarlton
Raymond C. Tarlton